IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : April 05, 2007.

1. L.P.A No. 135 of 2001.

Baldev Singh & others,

2. L.P.A No. 136 of 2001

Bhag Singh & others,

3. L.P.A No. 137 of 2001

Amarjit Kaur and others

4. L.P.A No. 138 of 2001

Bhajan Singh & others

5. L.P.A No. 139 of 2001

Kartar Singh and others

6. L.P.A No. 140 of 2001

Amar Singh

7. L.P.A No. 141 of 2001

Amarjit Kaur and others

8. L.P.A No. 142 of 2001

Tara Devi and others

9. L.P.A No. 143 of 2001

Bhag Singh and others

10. L.P.A No. 144 of 2001

Mustarka Malkan through Baldev Singh & Gurdial Singh

11. L.P.A No. 145 of 2001

Gurdial Singh and others

12. L.P.A No. 146 of 2001

Surjit Singh and another

13. L.P.A No. 147 of 2001
Amar Kaur and others

14. L.P.A No. 148 of 2001

Ronaq Singh and others

15. L.P.A No. 149 of 2001

Gurmail Kaur and others

16. L.P.A No. 150 of 2001

Surjit Singh and another

17. L.P.A No. 151 of 2001

Sewa Singh & another

18. L.P.A No. 152 of 2001

Sewa Singh & another

19. L.P.A No. 153 of 2001

Badan Singh & another

20. L.P.A No. 513 of 2001

Smt.Gian Kaur & others

21. L.P.A No. 777 of 2001

Janmeja Singh & another

.....Appellants

Through : Mr. Ajay Jain, Advocate,
Mr.S.K.Singla, Advocate &
Mr. S.S.Rangi, Advocate.

v.

State of Punjab through Collector Land Acquisition, SYL Canal Project, Patiala Distt. Patiala

.....Respondent

Through: Mr.A.G.Masih, Sr.DAG, Punjab

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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This order shall dispose of L.P.A Nos. 135 to 153, 513 and 777 of 2001, as they arise from the same acquisition proceedings.

These appeals have been filed, praying for enhancement of compensation, determined by the learned Single Judge, vide his judgment dated 17.2.2000.

The State of Punjab issued a notification, under Section 4 of the Land Acquisition Act, 1894, (herein after referred to as "the Act"), on 7.10.1985 for acquiring 101.54 acres of land, for the public purpose of constructing Satluj Yamuna Link canal, in the revenue estate of village Mehdudan, Tehsil Rajpura, District Patiala. This was followed by a notification, under Section 6 of the Act, dated 10.10.1985.

On 14.8.1986, the Land Acquisition Collector awarded compensation to the claimants at the following rates :-

Chahi	Rs.71,990/-
Barani	Rs.50,000/-
Banjar/Gair Mumkin	Rs.35,000/-

Dis-satisfied with the aforementioned compensation, the land owners preferred references praying for enhancement of the amount,

awarded by the Land Acquisition Collector. The references were forwarded to the District Judge, Patiala. The appellants, as also the State, led evidence and after an appraisal thereof, the Additional District Judge, Patiala, vide award dated 17.1.1992, enhanced compensation to the following terms:-

1.Chahi.	Rs.1,25,000/- per acre.
2. Barani	Rs.75,000/- per acre.
3. Banjar	Rs.55,000/- per acre.

The appellants were also held entitled to solatium and interest, as also the additional amount, as envisaged by the provisions of the Act.

Aggrieved by the aforementioned award, the State of Punjab filed appeals, for reduction of the amount of compensation, whereas the appellants filed cross objections/appeals for further enhancement of compensation on the basis of existing market rates.

The learned Single Judge, vide the impugned judgment, dismissed the appeals, filed by the State of Punjab and accepted the appeals/cross objections, filed by the appellants, and enhanced the amount of compensation to the following rates :-

1.Chahi.	Rs.1,35,000/- per acre.
2. Barani	Rs.1,00,806/- per acre.
3. Banjar	Rs.0,60,483.87 per acre.

The only point, argued by counsel for the appellant-land owners, is that while assessing the market value of the acquired land, the learned Single Judge relied upon a judgment of this Court, Ex.A6 pertaining to land, situated in village Polwal, Tehsil Rajpura, acquired in the year 1982. As the land, subject matter of the present acquisition, was acquired in the year 1985 i.e a gap of three years, the learned Single Judge should

have enhanced the compensation by 12% per annum over and above the amount, determined by Ex.A6 by applying the principle of 12% increase per annum, as laid down in Section 23(1-A) of the Act.

Reliance, for the above proposition, is placed upon Inder Singh v. The State of Punjab through Secretary to Government Punjab and another, Vol.XCIV-(1988-2) 190, and State of Haryana v. Bhagwati Devi (died) through L.Rs, 2000(2) LACC 305.

Counsel for the State of Punjab, on the other hand, contends that Section 23(1-A) of the Act, that provides for an increase of 12% from the date of the notification, under Section 4 of the Act, to the date of pronouncement of the award or the taking of possession, which ever is earlier, is irrelevant for the present controversy. Though there is a time gap of three years between the acquisition, subject matter of Ex.A6 and the present acquisition, this time difference alone cannot be cited as a circumstance to claim increase in the market value. The absence of any evidence on record to suggest increase in prices in the intervening period negates the appellants' claim. It is further contended that the learned Single Judge, while taking notice of the time gap between Ex.A6 and the present acquisition, awarded an amount in excess of the amount, awarded in Ex.A6 and, therefore, the present appeals be dismissed. It is contended that there cannot be any hard and fast rule with regard to the percentage of increase to be awarded.

We have heard learned counsel for the parties, perused the paper book, as also the record.

Learned Single Judge, while enhancing the compensation, awarded by the Reference Court, placed reliance upon a judgment of this

Court, pronounced in RFA No.2475 of 1987, decided on 31.8.1989, affirmed in LPA No.1051 of 1992, decided on 28.7.1993. It is not denied that the land, subject matter of Ex.A6, was acquired in the year 1982, whereas in the present acquisition, notification, under Section 4 of the Act bears the dated 7.10.1985. It is not denied that the acquired land falls within the periphery of Chandigarh and for the last more than three decades, there has been a phenomenonal increase in price of landed property. With the setting up of capital of Punjab, the bifurcation of the State of Punjab into the States of Punjab and Haryana, these States developed satellite towns of Mohali and Panchkula. The State of Punjab had enacted the Periphery Control Act, 1952, to regulate urbanization within the periphery of Chandigarh. It is not denied that land in village Mehdudan falls within the periphery of Chandigarh. In view of the rapid urbanization of the area, around Chandigarh and Mohali, and the sharp escalation in prices over the last three decades, the learned Single Judge apparently took judicial notice of the aforementioned fact and, thus, enhanced the compensation.

The question, however, that merits adjudication is whether any increase should be awarded, where the acquisition, relied upon, is separated by a few years from the acquisition whose market value is sought to be determined and if so, the percentage of increase to be awarded, as also the mode and manner of its determination.

The first question, namely, the grant of increase does not pose any difficulty. As a general rule, Courts tend to lean towards reliance upon judicial instances of market value. The judicial determinations of market value, all other factors being similar, are fair indicators as to the market

value of land, and where an instance, cited as evidence of market value, is prior in time to the acquisition, market value whereof is under determination, a Court would be empowered to take judicial notice of a sustained increase in prices of land, in the locality. However, at the heart of every judicial determination of market value, lies a paradox that may be summed up in the words of Hon'ble Supreme Court in Land Acquisition Officer v. Jasti Rohini, (1995) 1 SCC 717, which reads as under :-

> "The question of fixation of market value is a paradox which lies at the heart of the law of compulsory purchase of land. The paradox lies in the facts that the market value concept is purely a phenomenon evolved by the courts to fix the price of land arrived between the hypothetical willing buyer and willing seller bargaining as prudent persons without a modicum of constraints or without any extraordinary circumstances. But the condition of free market is the very opposite of the condition of the compulsory purchase which is ex hypothesi, a situation of constraints. Therefore, to say, that for compulsory purchase, compensation is to be assessed and market value is to be determined in that state of affairs has to be visualised in terms by its direct opposite. To solve the riddle, courts have consistently evolved the principle that the present value as on the date of the compulsory acquisition comprised of all utility reached in a competitive field as on the date of the notification and the price on which a prudent and willing

vendor and a similar purchaser would agree. The value of the land shall be taken to be the amount that the land if sold in the open market by a willing seller might be expected to realise from a willing purchaser. A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into consideration would offer to purchase the land as on the date of the sale. The compensation must, therefore, be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser as on the date of the notification published under Section 4(1). The disinclination of the seller to part with his land and the urgent necessity of the vendee to purchase the land must, alike, be disregarded and neither of them must be considered as acting under compulsion.

In determining the market value and fixation of compensation, the court should be alive to the factors mentioned in Section 24 of the Act and keep them at the back of the mind and should not be influenced by the future or later development in the locality or neighbourhood and should not get influenced by the prevailing situation as on the date of the determination of the compensation. Its consideration should alone be confined to the market value prevailing as on the date of

the notification under Section 4(1)."

Accepting the paradox, inherent in judicial determination of a market value and the contradictions that would naturally arise, Courts, while determining the market value, are guided by the positive principles, set out in Section 23 of the Act and the negative covenants set out in Section 24 of the Act. However, these factors are merely illustrative and in no manner exhaustive of the principles that govern a judicial determination of market value. A factor, not referred to in either of the aforementioned Sections, is the power of a Court to take judicial notice of an increase in prices of landed property. A Court has inherent power to take judicial notice of facts that fall within the realm of public knowledge. The increase in prices of landed property is a fact within the realm of public knowledge and, therefore, a Court, while determining the market value, would be within its rights to take judicial notice of increase in prices of landed property. The question, however, that exercises us is the percentage of increase to be awarded, while taking judicial notice of the increase in prices and where a period of time separates the judicial instances, relied upon and the acquisition, market value whereof is to be determined.

Counsel for the appellants would have us accept his contention that legislative intent behind the enactment of Section 23(1-A) of the Act be adopted, while awarding such increase. The argument, though attractive, cannot, in our considered opinion, be accepted. The legislative intent that led to the enactment of Section 23(1-A) of the Act that provides for 12% increase per annum over and above the amount assessed by the Collector has its genesis in the long and inordinate delays that took place between the notification, issued under Section 4 of the Act and the pronouncement of

the Award. The legislature in its wisdom decided to alleviate these delays by enacting Section 23(1-A) of the Act. Consequently, the amount of 12%, as envisaged by Section 23(1-A) of the Act would have no relevance to the determination of market value, as envisaged by Section 23 of the Act.

The discretion to determine market value vests in a Court. This discretion tempered, however, by Sections 23 and 24 of the Act, cannot be placed in a strait jacket of formulae. There may arise situations, where the evidence on record suggests an increase of more than 12%. Similarly, a converse situation may arise, where the increase may be less than 12% and in extreme situations, there may be cases where the market value may have actually plummeted. Prices of land are known to fluctuate over periods of time. Thus, the safest course, in our considered opinion, would be to leave the percentage of increase to be awarded to the discretion of Courts to be determined after taking into consideration all relevant factors and depending upon the facts and circumstances of each case. To place judicial discretion within the confines of a formula would, in order considered opinion, whittle down the power, vested in a Court by the Act. Thus, we are of the considered opinion that each Court should be left to decide the percentage of increase, depending upon the facts and circumstances of each case.

The judgments, relied upon by counsel for the appellants, do not advance the appellants' case. In Inder Singh's case (supra), 12% increase was awarded without setting out any binding ratio. In State of Haryana v. Bhagwati Devi(died) through L.Rs (supra), the learned Single Judge applied the legislative intent behind Section 23(1-A) of the Act to the determination of market value. As held herein before, the principle of 12%

increase, contained in Section 23-A of the Act cannot be applied mutatis mutandis to a judicial determination of market value. A Court would be free to arrive at its own conclusions as to the percentage of increase to be awarded depending upon the evidence on record and the circumstances obtaining.

Taking into consideration the aforementioned proposition of law, we are satisfied that the market value, as determined by the learned Single Judge, does not call for any interference. The learned Single Judge apparently took into consideration the increase in prices in the area and, therefore, determined the market value over and above that awarded in Ex.A6. We find no infirmity or illegality in the exercise of judicial discretion and, therefore, uphold the judgment of the learned Single Judge and dismiss the present appeals with no order as to costs.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

April 05, 2007.
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